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NO. 81-1809

IN THE SUPREME COURT OF

THE UNITED STATES

OCTOBER TERM 1981

STATE OF ALABAMA,

PETITIONER,

VS.

EDWARD HORSLEY,

RESPONDENT.

SUPPLEMENTAL RESPONSE TO PETITION FOR CERTIORARI

The State of Alabama petitions here for a writ of certiorari to review the decision of the Alabama Appellate Courts to remand Respondent's criminal case for new trial. This Court's decision in O'Dell v. Espinoza, _____ U.S. _____, 50 U.S.L.W. 4477 (May 3, 1982) requires that the petition for certiorari filed herein be denied. In O'Dell this Court held that the decision to remand a case for new trial (by a State Court) is not a "final judgment" under 28 U.S.C. § 1257 and therefore, this Court has no jurisdiction to review the decision. Therefore this cause is due to be dismissed for want of jurisdiction.

Submitted by,

Jack Drake
DRAKE, KNOWLES & PIERCE
Post Office Box 86
Tuscaloosa, Alabama 35402

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Jack Drake, the undersigned attorney, do hereby certify that prior to filing the foregoing or immediately thereafter, I caused to be mailed a true and correct copy of same, United States postage prepaid, and correctly addressed to Hon. Charles Graddick and Hon. Edward Carnes.

Done this 10 day of May, 1982.

Russell H. Drake
Attorney for Respondent

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MOTION TO DISMISS

Respondent moves to dismiss this action because the State Court decision sought to be reviewed is not "final" within the meaning of 28 U.S.C. § 1257 as noted in O'Dell v. Espinoza, _____ U.S. _____, 50 U.S.L.W. 4477 (May 3, 1982).

Submitted by,

Jack Drake
DRAKE, KNOWLES & PIERCE
Post Office Box 86
Tuscaloosa, Alabama 35402

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I, Jack Drake, the undersigned attorney, do hereby certify that prior to filing the foregoing or immediately thereafter, I caused to be mailed a true and correct copy of same, United States postage prepaid, and correctly addressed to Hon. Charles Graddick and Hon. Edward Carnes.

Done this 10 day of May, 1982.

Attorney for Respondent